

Ordinance No: 15-79
Zoning Text Amendment No.: 06-11
Concerning: Amendment to the Wheaton
Retail Preservation Overlay Zone
Draft No. & Date: 3 -7/18/06
Introduced: April 4, 2006
Public Hearing: June 13, 2006; 1:30 p.m.
Adopted: July 18, 2006
Effective: August 7, 2006

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Perez and Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- promoting higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development;
- revitalizing and retaining the existing street level retail area in the Wheaton Central Business District as a major marketplace;
- amending the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and
- generally amending the Wheaton Retail Preservation Overlay zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-18	"OVERLAY ZONES"
Section 59-C-18.10	"Retail Preservation Overlay Zone for the Wheaton Central Business District"
Section 59-C-18.101	"Purpose"
Section 59-C-18.102	"Regulations"
Section 59-C-18.103	"Procedures for application and approval"
Section 59-C-18.104	"Site plan contents and exemptions"
Section 59-C-18.105	"Planning Board approval"

*EXPLANATION: **Boldface** indicates a heading or a defined term.*

*Underlining indicates text that is added to existing laws
by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.*

*Double underlining indicates text that is added to the text
amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.*

** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 06-11 was introduced on April 3, 2006, for the purpose of promoting higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development; revitalizing and retaining the existing street level retail area in the Wheaton Central Business District as a major marketplace; amending the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and generally amending the Wheaton Retail Preservation Overlay zone.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with amendments.

The County Council held a public hearing on June 13, 2006, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions on June 21 and 29, 2006 to review the amendment.

The Committee recommended lifting the prohibition on the optional method of development reasoning that the limits on development nearest the Metrorail station should be less constrained.

The Committee would allow optional method density without a requirement to buy TDRs. The Committee believes that the untested market in Wheaton should not be required to bear an extra burden.

The Committee recommended a height limit of 125 feet. However, a 10- foot height limit is recommended for the CBD-2 area near a residential community. The northwest corner of the overlay zone is CBD-1 zoned. A height limit of 90 feet already exists in the CBD-1 zone. The Committee recommended that these height limits should not be increased for MPDUs or Workforce Housing.

The Committee favors a requirement for small street-level spaces as a condition of an optional method of development project approval. The Committee also recommends street-level space as a condition for standard method density bonus. However, the Committee believes the term "small business" could lead to confusion and recommended its removal. The Committee also recommended a requirement that small street-level space be provided for 3 years. The ZTA as introduced requires small street-level space for 10 years. The Committee wanted growth opportunities for the businesses in a new development.

The Planning Board requested specific text to require optional method projects to construct a street facade. The Committee expected the Planning Board to require a street facade

but did not wish to make any specific requirements. The Committee did not believe that such detailed guidelines should be in the Zoning Ordinance.

The Committee recommended the removal of the proposed bonus density in optional method projects for having 60% of a projects street level for small street level spaces from the ZTA.

The Committee supported the bonus provision for standard method of development projects. The Committee did not recommend excluding the bonus space from floor area ratio calculations. The Committee recommended describing the extra space as a bonus.

True green space was important to the Committee. To that end, the Committee recommended amending the provision requiring 50% of public use space for green area but would not include "sidewalks, walkways, swimming pools and other hard surfaces" as part of that green area.

The Committee also recommended only allowing existing buildings that do not exceed 85% building coverage to construct additions without meeting the 75% coverage limit if they provide 30% of their street level space as small space. The Committee did not recommend that any new project be allowed an increased footprint.

The Committee supported the removal of the site plan requirement for projects less than 20,000 square feet of gross floor area. The Committee also recommended that all projects more than 15,000 square feet of gross floor area of new construction or an addition that makes the total building more than 15,000 square feet of gross floor area be required to provide streetscaping.

The Committee recommended expanding the uses allowed as recommended in the ZTA. The Planning Board staff recommended excluding automobile sales, indoor boat sales, department stores, drive-in restaurants, hardware stores greater than 10,000 square feet, and appliance repair shops. The Committee believed that these uses are suitable for the Wheaton CBD.

The Committee recommended allowing a project plan to be approved as part of the subdivision process provided that the Planning Board makes all of the findings required in the optional method process.

The District Council reviewed Zoning Text Amendment No. 06-11 at a worksession held on July 18, 2006, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 06-11 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-C-18 is amended as follows:

DIVISION 59-C-18. OVERLAY ZONE

* * *

59-C-18.10. Retail preservation overlay zone for the Wheaton Central Business District.

59-C-18.101. Purpose.

It is the purpose of this overlay zone to:

(a) Retain a [the existing scale of development and] mix of retail and service uses within the Wheaton Central Business District.

(b) [Regulate development to preserve] ~~[[Provide opportunities to r]]~~Retain a variety of small businesses, retail uses and services in the Wheaton Central Business District and ~~[[to]]~~ encourage new businesses to meet the needs of workers, shoppers, visitors and residents.

(c) Encourage building designs [to make new buildings] compatible with the existing [buildings] character of street level uses found within and adjacent to the overlay zone.

(d)[[Provide flexible standards to implement public objectives such as retention of the small business character that exists in downtown Wheaton.]]

[[e)] Encourage higher-density, mixed-use, transit oriented development located in close proximity to the Wheaton Transit Station, with an emphasis on housing, office uses, commercial services, and arts and entertainment establishments.

24 [[f]]

25 (e) Encourage both standard method of development and optional method of
 26 development projects to include small, street level businesses to help retain a
 27 small business identity.

28 **59-C-18.102. Regulations.**

29 (a) **[Restriction on use of o] Optional method of development.** [In the
 30 Wheaton Retail Preservation Overlay Zone, the optional method of
 31 development is prohibited.] The optional method of development
 32 procedure may be used if authorized in the underlying zone. However, an
 33 optional method of development project is not required to have a minimum
 34 lot area. Use of the optional method of development procedure is intended
 35 to promote higher density mixed-use development in close proximity to the
 36 Wheaton Metro Station and to revitalize and retain the existing retail area
 37 in Wheaton as a major marketplace.

38 **(1) Optional Method of Development Standards.**

39 (A) The maximum height for any CBD-2 or CBD-3 zoned optional
 40 method of development project [[located south of Ennals
 41 Avenue, south of Price Avenue and west of Fern Street]] is 125
 42 feet. However,[[T]]the maximum building height for any
 43 CBD-2 [[or CBD-3 zoned optional method of development
 44 project located north of Ennals Avenue, north of Price Avenue
 45 and]] east of Fern Street is 100 feet.

46 (B) Any optional method of development project must provide at
 47 least 45 percent of the street level [[retail]] space for use by

[[small]] businesses with less than 3,000 [[gross]] square feet of gross floor space and restaurants with less than 5,000 square feet of gross floor space. The street level space must be so restricted [[to such small business use occupants]] for a period of [[ten]] six years after the issuance of the initial use and occupancy permit for the street level space. The [[ten]] six year time period is binding upon future owners and successors in title and must be stated as a condition of any site plan approved by the Planning Board. Before a building permit is submitted for approval in conformance to an approved optional method project, the applicant must file a covenant in the land records of Montgomery County, Maryland that reflects the restrictions on the street level space.

[[C]] The maximum FAR allowed in the underlying zone may be increased by an amount equal to 15 percent of the street level space if a total of 60 percent of the street level space is devoted to small business use as described in subsection (B) above.]]

[[D]]C) At least one-half of the public use space required under 59-C-6.233 must be green area [[and include landscape features]]excluding sidewalks, walkways, swimming pools and other hardscapes, that will serve [[to enhance the]]as an amenity [[of]]for the development.

[[E]]D) The Planning Board may require street façade treatment. Minimum requirements may be established by Planning Board guidelines that implement the recommendations of the sector

plan. [[allow any public use space requirement under Sec. 59-C-6.233 that is less than 1,800 square feet to be provided off-site within the Wheaton CBD as either public use space or streetscape on a one-for-one square foot basis.]]

(b) Standard Method of Development

(1) For any standard method of development project that provides at least 30 percent of the street level [[retail]] floor space for use by businesses with less than 3,000 [[gross]] square feet of gross floor space and restaurants with less than 5,000 square feet of gross floor space, 30 percent of the street level floor space [[must not be included in]] may be in addition to the maximum FAR calculation allowed under the base zone. Street level [[S]]space provided [[for small business use]] must be [[maintained]] so restricted for [[small business user]] for a period of [[ten]] six years after the issuance of the initial use and occupancy permit for street level space. The [[ten]]six year time period is binding upon future owners and successors in title and must be stated as a condition in any site plan approved by the Planning Board. Before a building permit is submitted for approval in conformance to an approved optional method project, the applicant must file a covenant in the land records of Montgomery County, Maryland that reflects the restrictions on the street level space.

(2) Any standard method project for a building existing as of July 1, 2006 with a building coverage not exceeding 85% and [[The

maximum building coverage under Section 59-C-6.232, may be increased from 75 percent to 85 percent for any standard method of development project]] that provides street level [[retail]] space for use by businesses with less than 3,000 [[gross]] square feet of gross floor space and restaurants with less than 5,000 square feet of gross floor space, in the amounts and with the restrictions required in subsection (1) above, shall be a conforming use provided the building coverage is not increased.

- (3) As part of the approval of a site plan for a standard method of development project, the Planning Board may allow any public use space requirement under Sec. 59-C-6.233 that is less than 1,800 square feet to be provided off-site within the Wheaton Central Business District as either public use space or streetscape, on a one-for-one square foot basis.

[(b)](c)Land uses. All permitted [or] and special exception uses allowed under the standard method of development and the optional method of development [in] of the underlying CBD Zone, are allowed in the Wheaton CBD overlay zone, except that:

- (1) [In new buildings over one story in height built after July 16, 1990, the street level leasable space must be used for:] In any building constructed after July 16, 1990, the street level leasable space must be used only for the following purposes:

(A) hotel

(B) any of the commercial uses [in subsection] allowed under

123 59-C-6.22(d);

124 ([B] C) the following service uses [in subsection] allowed under

125 59-C-6.22(e):

126 appliance repair shop[s];

127 banking and financial institution[s];

128 barber and beauty shop[s];

129 child day care facility;

130 clinic

131 dry cleaning and laundry pickup station[s];

132 duplicati[on]ng service[s];

133 educational institution, private

134 health club

135 photographic studio[s];

136 self-service laundromat;

137 shoe repair shop[s];

138 tailoring or dressmaking shop[s]; or

139 ([C] D)[the following] all cultural, entertainment and recreational uses

140 [from subsection] allowed under 59-C-6.22(f) as well as art galleries

141 which are permitted as specialty shops under 59-C-6.22(d).[:]

142 [billiard parlors;

bowling alleys;
commercial recreational or entertainment establishments;
indoor theater;
libraries and museums.]

(2) In any new buildings [built] constructed after July 16, 1990, all street level [retail] uses must be directly accessible from a sidewalk, plaza, or other public space.

[(3) Windows and apertures cover occupy at least 50 percent of the street-level exterior wall area that fronts on sidewalks, plazas, or other public open spaces.]

59-C-18.103. Procedure for application and approval.

(a) Standard Method of Development: ~~[[If required, [A] a site plan for [any] development in the Wheaton Retail Preservation Overlay Zone must be approved under [the provisions of] Division 59-D-3.]]~~ Development subject to site plan approval under Division 59-D-3[includes] is limited to the following:

[(a)] (1) construction of new buildings that include more than 20,000 square feet of floor area or exceed 42 feet in height; and

[(b)] (2) additions and other exterior improvements to existing buildings that cumulatively increase the total amount of [development] floor area on a site to more than 20,000 square feet or increase the building height to more than 42 feet[;]. [and]

- 165 [(c) addition of off-street parking spaces or amendments to parking facilities
166 that require the approval of a new parking facilities plan under Section
167 59-E-4.1.]

168 (b) **Optional Method of Development:**

- 169 (1) For projects that are subject to subdivision or resubdivision under
170 Chapter 50, a Division 59-D-2 Project Plan is not required. In order
171 to approve the preliminary plan of subdivision, the Planning Board
172 must find that the proposed subdivision will [[include public facilities,
173 amenities and design features that will create an environment capable
174 of supporting the greater densities and intensities permitted by the
175 limited optional method of development allowed in this Overlay
176 Zone.]] meet the requirements of 59-D-2.42 and 59-D-2.43, however
177 nothing in the Wheaton and Vicinity Sector Plan will prohibit the use
178 of optional method of development approval.
- 179 (2) For projects that are not subject to subdivision or resubdivision, under
180 [[the provisions of]] Chapter 50, a project plan must be submitted and
181 approved in accordance with [[the procedures of]] Division 59-D-2.
- 182 (3) For any optional method of development proposal in the Wheaton
183 Retail Preservation Overlay Zone, a Division 59-D-3 Site Plan must
184 be submitted and approved by the Planning Board, in accordance with
185 the provisions of Division 59-D-3.

186 **59-C-18.104. Site plan contents and exemptions.**

(a) Sections 59-D-3.22 and 59-D-3.23 do not apply in the Wheaton CBD overlay zone for standard method of development projects that require site plan approval.

(b) A site plan for a standard method of development project in the Wheaton CBD overlay zone must include:

- (1) the location, height, ground coverage, and use of all structures;
- (2) for each residential building, the number and type of dwelling units, classified by the number of bedrooms, and the total floor area, if any, to be used for commercial purposes;
- (3) the floor areas of all nonresidential buildings and the proposed use of each;
- (4) the location of recreational and green areas and other open spaces;
- (5) calculations of building coverage, density, green area, number of parking spaces, and areas of land use;
- (6) the location and dimensions of all roads, streets and driveways, parking facilities, loading areas, points of access to surrounding streets, and pedestrian walks;
- (7) a landscaping plan (or final forest conservation plan, if required under Chapter 22A), showing all man-made features and the location, height or caliper, and species of all plant materials;
- (8) an exterior lighting plan, including all parking areas, driveways and pedestrian ways, alleys, building security lights, and the height,

number, and type of fixtures with a diagram showing their light distribution characteristics; and

- (9) a development program with the sequence in which all structures, open spaces, vehicular and pedestrian circulation systems, landscaping, and recreational facilities are to be developed. The applicant must designate the point in the development program sequence when the applicant will ask the Planning Board to inspect[ion] for compliance with the approved site plan.

[(10) a streetscape plan prepared in accordance with the Wheaton Central Business District Streetscape Standards adopted by Executive Regulation. The required streetscape must be provided before the issuance of the final use and occupancy permit by the Department of Permitting Services.]]

59-C-18.105. [Planning Board] [a]Approval Requirements for All Projects In the Wheaton Retail Preservation Overlay Zone.

[(a)] [The Board must find that] [a]At least 50 percent of the street level exterior wall area, fronting on sidewalks, plazas, or other public open spaces, [has] must contain windows and apertures [before approving a site plan for the Wheaton CBD overlay zone].

(b) A project for the construction of a new building that includes more than 15,000 square feet of gross floor area, or that cumulatively increases the total amount of gross floor area on a site to more than 15,000 square feet, must provide streetscaping in accordance with the Wheaton Central Business District Streetscape Standards. The

required streetscape must be provided before the issuance of the final
use and occupancy permit by the Department of Permitting Services.

[(b) The procedures for Planning Board approval under Section 59-D-3.4
are modified for this overlay zone to require the following findings:

(1) the site plan does not conflict with the recommendations in the
Wheaton CBD Sector Plan;

(2) the site plan meets all of the requirements of this overlay zone as
well as the applicable requirements of the underlying zone; and

(3) each structure and use is compatible with other uses and other
site plans and with existing and proposed adjacent
development.]

Sec. 3. Effective date. This ordinance becomes effective 20 days after the
date of Council adoption.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council